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12 and ANDREW SWANSON
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15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

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18 GEORGE ATONDO,
19 Plaintiff,

20 v.
21 COUNTY OF SOLANO, ANDREW
22 SWANSON in his individual capacity, and
23 DOES 1 through 15, inclusive,
24 Defendants.

25 Case No. 2:08-cv-02794-FCD-EFB

26 **STIPULATION AND PROTECTIVE
27 ORDER REGARDING CONFIDENTIAL
28 INFORMATION AND DOCUMENTS**

29 **I. PURPOSES AND LIMITATIONS**

30 Disclosure and discovery activity in this action are likely to involve production of
31 confidential, proprietary, or private information for which special protection from public
32 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
33 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
34 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
35 all disclosures or responses to discovery and that the protection it affords extends only to the
36 limited information or items that are entitled under the applicable legal principles to treatment as
37 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
38 Stipulated Protective Order creates no entitlement to file confidential information under seal. A
39 party must seek permission from the court to file material under seal.

1 2. **DEFINITIONS**

2 2.1 Party: any party to this action, including all of its officers, directors,
3 employees, consultants, retained experts, and outside counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information, regardless of the
5 medium or manner generated, stored, or maintained (including, among other things, testimony,
6 transcripts, or tangible things) that are produced or generated in disclosures or responses to
7 discovery in this matter.

8 2.3 "Confidential" Information or Items: information (regardless of how generated,
9 stored or maintained) or tangible things that qualify for protection under standards developed
10 under F.R.Civ.P.26(c).

11 2.4 "Highly Confidential - Attorneys' Eyes Only" Information or Items: extremely
12 sensitive "Confidential Information or Items" whose disclosure to another Party or non-party
13 would create a substantial risk of serious injury that could not be avoided by less restrictive
14 means.

15 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
16 Producing Party.

17 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
18 Material in this action.

19 2.7 Designating Party: a Party or non-party that designates information or items
20 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly
21 Confidential - Attorneys' Eyes Only."

22 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
23 "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

24 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
25 retained to represent or advise a Party in this action.

26 2.10 House Counsel: attorneys who are employees of a Party.

27 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
28 their support staffs).

1 2.12 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action and who is not a past or a current employee of a Party or
4 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
5 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
6 trial consultant retained in connection with this litigation.

7 2.13 Professional Vendors: persons or entities that provide litigation support
8 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
10 subcontractors.

11 **3. SCOPE**

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
14 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
15 parties or counsel to or in court or in other settings that might reveal Protected Material.

16 **4. DURATION**

17 Even after the termination of this litigation, the confidentiality obligations imposed by this
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
19 otherwise directs.

20 **5. DESIGNATING PROTECTED MATERIAL**

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
22 Party or non-party that designates information or items for protection under this Order must take
23 care to limit any such designation to specific material that qualifies under the appropriate
24 standards. A Designating Party must take care to designate for protection only those parts of
25 material, documents, items, or oral or written communications that qualify - so that other portions
26 of the material, documents, items, or communications for which protection is not warranted are
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1 not swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that
3 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
4 unnecessarily encumber or retard the case development process, or to impose unnecessary
5 expenses and burdens on other parties), expose the Designating Party to sanctions.

6 If it comes to a Party's or a non-party's attention that information or items that it
7 designated for protection do not qualify for protection at all, or do not qualify for the level of
8 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
9 withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
12 material that qualifies for protection under this Order must be clearly so designated before the
13 material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (apart from transcripts of
16 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" at the top
18 of each page that contains protected material. If only a portion or portions of the material on a
19 page qualifies for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
21 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
22 CONFIDENTIAL - ATTORNEYS' EYES ONLY").

23 A Party or non-party that makes original documents or materials available
24 for inspection need not designate them for protection until after the inspecting Party has indicated
25 which material it would like copied and produced. During the inspection and before the
26 designation, all of the material made available for inspection shall be deemed "HIGHLY
27 CONFIDENTIAL - ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
28 documents it wants copied and produced, the Producing Party must determine which documents,

1 or portions thereof, qualify for protection under this Order, then, before producing the specified
2 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
3 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY") at the top of each page that
4 contains Protected Material. If only a portion or portions of the material on a page qualifies for
5 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins) and must specify, for each portion, the level of protection
7 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
8 EYES ONLY").

9 (b) for testimony given in deposition or in other pretrial or trial
10 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
11 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
12 and further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL -
13 ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of
14 testimony that is entitled to protection, and when it appears that substantial portions of the
15 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
16 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
17 have up to 20 days to identify the specific portions of the testimony as to which protection is
18 sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY
19 CONFIDENTIAL - ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are
20 appropriately designated for protection within the 20 days shall be covered by the provisions of
21 this Stipulated Protective Order.

22 Transcript pages containing Protected Material must be separately bound
23 by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL"
24 or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," as instructed by the Party or
25 non- party offering or sponsoring the witness or presenting the testimony.

26 (c) for information produced in some form other than documentary, and for
27 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
28 container or containers in which the information or item is stored the legend "CONFIDENTIAL"

1 or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." If only portions of the
2 information or item warrant protection, the Producing Party, to the extent practicable, shall
3 identify the protected portions, specifying whether they qualify as "Confidential" or as "Highly
4 Confidential- Attorneys' Eyes Only."

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items as "Confidential" or "Highly Confidential - Attorneys'
7 Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection
8 under this Order for such material. If material is appropriately designated as "Confidential" or
9 "Highly Confidential - Attorneys' Eyes Only" after the material was initially produced, the
10 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
11 that the material is treated in accordance with the provisions of this Order.

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13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
15 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
16 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
17 waive its right to challenge a confidentiality designation by electing not to mount a challenge
18 promptly after the original designation is disclosed.

19 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
20 Party's confidentiality designation must do so in good faith and must begin the process by
21 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
22 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
23 for its belief that the confidentiality designation was not proper and must give the Designating
24 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
25 change in designation is offered, to explain the basis for the chosen designation. A challenging
26 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
27 and confer process first.

28 6.3 Judicial Intervention. A Party that elects to press a challenge to a

1 confidentiality designation after considering the justification offered by the Designating Party
2 may file and serve a motion that identifies the challenged material and sets forth in detail the basis
3 for the challenge. Each such motion must be accompanied by a competent declaration that affirms
4 that the movant has complied with the meet and confer requirements imposed in the preceding
5 paragraph and that sets forth with specificity the justification for the confidentiality designation
6 that was given by the Designating Party in the meet and confer dialogue. The burden of
7 persuasion in any such challenge proceeding shall be on the Designating Party. Until the court
8 rules on the challenge, all parties shall continue to afford the material in question the level of
9 protection to which it is entitled under the Producing Party's designation.

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7. ACCESS TO AND USE OF PROTECTED MATERIAL

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7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of Section 11, below.

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Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

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7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

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(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

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(b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
2 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);
3 (c) experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
5 Bound by Protective Order" (Exhibit A);
6 (d) the Court and its personnel;
7 (e) court reporters, their staffs, and professional vendors to whom
8 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
9 Bound by Protective Order" (Exhibit A);
10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
12 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
13 Protected Material must be separately bound by the court reporter and may not be disclosed to
14 anyone except as permitted under this Stipulated Protective Order;
15 (g) the author of the document or the original source of the information.

16 7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
17 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
19 CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

20 (a) the Receiving Party's Outside Counsel of record in this action, as well
21 as employees of said Counsel to whom it is reasonably necessary to disclose the information for
22 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
23 attached hereto as Exhibit A;
24 (b) Experts (as defined in this Order) to whom disclosure is reasonably
25 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective
26 Order" (Exhibit A); and (3) as to whom the procedures set forth in paragraph 7.4, below, have
27 been followed;
28 (c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information or Items to "Experts"

(a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any information or item that has been designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" first must make a written request to the Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity from whom the Expert has received compensation for work in his or her areas of expertise or to whom the expert has provided professional services at any time during the preceding five years, and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has provided any professional services during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding paragraph may disclose the subject Protected Material to the identified Expert unless, within seven court days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion with the Court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert is reasonably

1 necessary, assess the risk of harm that the disclosure would entail and suggest any additional
2 means that might be used to reduce that risk. In addition, any such motion must be accompanied
3 by a competent declaration in which the movant describes the parties' efforts to resolve the matter
4 by agreement (i.e., the extent and the content of the meet and confer discussions) and sets forth
5 the reasons advanced by the Designating Party for its refusal to approve the disclosure.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION.**

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

19 The Receiving Party also must immediately inform in writing the Party who caused the
20 subpoena or order to issue in the other litigation that some or all the material covered by the
21 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
22 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
23 caused the subpoena or order to issue.

24 The purpose of imposing these duties is to alert the interested parties to the existence of
25 this Protective Order and to afford the Designating Party in this case an opportunity to try to
26 protect its confidentiality interests in the court from which the subpoena or order issued. The
27 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
28 confidential material- and nothing in these provisions should be construed as authorizing or

1 encouraging a Receiving Party in this action to disobey a lawful directive from another court.
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3 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Stipulated Protective
6 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
7 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
8 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
9 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
10 Be Bound" that is attached hereto as Exhibit A.

11
12 **10. FILING PROTECTED MATERIAL.** Without written permission from the
13 Designating Party or a court order secured after appropriate notice to all interested persons, a
14 Party may not file in the public record in this action any Protected Material. A Party that seeks to
15 file under seal any Protected Material must file an appropriate motion with the Court to do so.

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17 **11. FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing by the
18 Producing Party, within sixty days after the final termination of this action, each Receiving Party
19 must return all Protected Material to the Producing Party. As used in this subdivision, "all
20 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of
21 reproducing or capturing any of the Protected Material. With permission in writing from the
22 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
23 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
24 submit a written certification to the Producing Party (and, if not the same person or entity, to the
25 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
26 the Protected Material that was returned or destroyed and that affirms that the Receiving Party has
27 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
28 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to

1 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
2 correspondence or attorney work product, even if such materials contain Protected Material. Any
3 such archival copies that contain or constitute Protected Material remain subject to this Protective
4 Order as set forth in Section 4 (DURATION), above.

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6 **12. MISCELLANEOUS**

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
8 to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
10 Order no Party waives any right it otherwise would have to object to disclosing or producing any
11 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
12 Party waives any right to object on any ground to use in evidence of any of the material covered
13 by this Protective Order.

14 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

15 Dated: April 14, 2010

MATHENY SEARS LINKERT & JAIME LLP

16
17 /s/ Raymond Bangle III

By:

18 RAYMOND BANGLE III, Attorneys for
19 Defendants, COUNTY OF SOLANO and
ANDREW SWANSON

20 Dated: April 14, 2010

PRICE AND ASSOCIATES

21
22 /s/ Pamela Y. Price

By:

23 PAMELA PRICE, Attorneys for Plaintiff,
ATONDO
24 State Bar No. 107713
Price and Associates
The Latham Square Building
1611 Telegraph Ave., Suite 1450
25 Oakland, CA 94612

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1 **IT IS SO ORDERED.**

2 Dated: April 19, 2010.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
7 EASTERN DISTRICT OF CALIFORNIA
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SACRAMENTO, CALIFORNIA 95853-4711

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Eastern District of California on
_____ [date] in the case of *Atondo v. County of Solano, et al.*, Case No. 2:08-cv-02794-
EFB. I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature:

Signature: _____